

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Indiana on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 1:07-cv-714-SEB-JMS		DATE FILED 6/6/2007	U.S. DISTRICT COURT Southern District of Indiana
PLAINTIFF J.B. DIST. SERVICE, INC. d/b/a FUNTASTIC CORPORATION		DEFENDANT COSSTAR, INC.	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 1,001,948	1,006,666	H2O ZONE (see Complaint)	
2 1,002,015	52,695		
3 1,002,020	53,699		
4 1,002,005	53,003		
5 1,003,005	53,006		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1 1,003,133	53,007				
2 1,003,206	53,008				
3 1,006,551					
4 1,006,552					
5 1,006,599					

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK <i>Sharon R. Briggs</i>	(BY) DEPUTY CLERK <i>Michael Carmichael</i>	DATE
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

STATE OF INDIANA **FILED** HAMILTON COUNTY SUPERIOR COURT

2007 MAY 14 PM 2:50 ROOM NO. —
SS: —

COUNTY OF HAMILTON,)

CAUSE NUMBER:

J.B. DISTRIBUTION SERVICE, INC.)
d/b/a FUNTASTIC CORPORATION,)

29 D 03 0705 PL 529

Plaintiff,)

v.)

COSSTAR, INC.)

Defendant.)

COMPLAINT

For this Complaint against Defendant, Cosstar, Inc., ("Cosstar"), Plaintiff, J.B. Distribution Service, Inc., d/b/a Funtastic Corporation ("Funtastic") hereby alleges as follows:

SUBSTANCE OF THE ACTION

1. This case involves infringement upon the distinctive and well known trademarks used by Funtastic in connection with the sale and promotion of its "H2O Zone" water related toys. Defendant's infringement arises out of the unauthorized use of the trademarked name "H2O Zone" on the packaging of some of its water related toys and in its subsequent advertisement on the internet and through its catalogue.
2. Defendant's use of the trademarked name "H2O Zone" on water related toys violates Funtastic's rights under federal trademark law, common law and Indiana state law. Funtastic asserts claims for federal trademark infringement, federal trademark dilution, false designation of origin or sponsorship, false advertising, and trade dress infringement pursuant to the Lanham Act, as well as common law trademark infringement, unfair competition, conversion, forgery, counterfeiting, and deception. Funtastic seeks a

permanent injunction preventing Defendant from using the "H2O Zone" trademark, along with an award of damages, treble damages, profits, attorney's fees and costs.

THE PARTIES

3. Funtastic is a business organized and existing under the laws of the state of Texas.
4. Defendant Cosstar is a business organized and existing under the laws of California. Defendant may be served through its registered agent, Jonathon S. Yang, 4121 South Alameda Street, Los Angeles, CA 90058.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this action pursuant to Ind. Code § 33-28-1-2 and Ind. Code § 33-33-29-7.
6. Defendant Cosstar has submitted to this Court's jurisdiction by doing business in the state of Indiana.
7. Venue properly lies in this Court because a substantial part of the events giving rise to the claims alleged herein arose in Hamilton County, Indiana.

GENERAL ALLEGATIONS AS TO FUNTASTIC

Funtastic's Trademark Rights

8. Funtastic is a closely held company that has been in business for more than ____ years.
9. Funtastic is the exclusive owner of the federally registered trademark "H2O Zone." This registration is active and unrevoked, and constitutes prima facie evidence of Funtastic's ownership of the marks.
10. The "H2O Zone" trademark is distinctive and well known.
11. Funtastic is engaged in the sale and/or licensing of promotional merchandise, including water toys bearing the "H2O Zone" trademark in Indiana and elsewhere.

12. Funtastic maintains strict control over the quality and nature of its products and items bearing the "H2O Zone" trademark.
13. Funtastic has invested considerable time and money in advertising its "H2O Zone" trademark throughout Indiana and elsewhere. As a result of extensive worldwide advertising, the "H2O Zone" mark is immediately recognizable.
14. Funtastic has acquired substantial goodwill among consumers.
15. As a result of such goodwill and immediate recognition, and as a result of extensive advertising, the "H2O Zone" trademark has become highly valuable.

Defendants' Infringement of Funtastic's Trademark Rights

16. Subsequent to Funtastic's development, use and registration of the "H2O Zone" trademark, Defendant began using the "H2O Zone" mark or a confusingly similar variation of the mark.
17. Defendant has manufactured, produced, advertised and/or sold water toys bearing the "H2O Zone" trademark. Specifically, Defendant distributed, advertised and/or sold the following products, listed by sku number, the trademark "H2O Zone": 1001948, 1002015, 1002020, 1002005, 1003005, 1003133, 1003206, 1006551, 1006552, 1006599, 1006666, 52695, 52699, 53003, 53006, 53007, and 53008.
18. Defendant has not received permission from Funtastic, or anyone acting on Funtastic's behalf, to advertise, sell, or distribute any item bearing the "H2O Zone" trademark.
19. By advertising, selling, and distributing items bearing the "H2O Zone" mark without permission, Defendant has attempted to profit from and capitalize on the trademark rights and substantial goodwill developed by Funtastic.
20. Defendant has willfully and intentionally advertised, sold, and distribute products bearing

the "H2O Zone" trademark with knowledge that the "H2O Zone" mark is a federally registered trademark owned by Funtastic.

21. Defendant advertised, sold, and distributed items bearing the "H2O Zone" mark with knowledge that Defendant's use of the "H2O Zone" trademark was unauthorized.
22. The advertisement, sale, and distribution of items bearing the "H2O Zone" trademark created a likelihood of consumer confusion.
23. Defendant used the "H2OZone" mark with the intent to confuse and/or deceive consumers.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114

24. Funtastic incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
25. Defendant has used in commerce, and in connection with the sale of goods, a reproduction, counterfeit, copy or colorable imitation of the "H2O Zone" trademark.
26. Defendant has reproduced, counterfeited, copied or imitated the "H2O Zone" mark and applied the mark to labels, signs, prints, packages, receptacles or advertisements intended to be used in commerce.
27. Defendant's use of the "H2O Zone" trademark creates the likelihood of confusion, mistake and/or deception among consumers.
28. Defendant willfully infringed on the trademark rights of Funtastic. Defendant intended to confuse, mistake or deceive consumers.
29. Defendant used the reproduction of the "H2O Zone" trademark with knowledge that the mark was a copy and/or counterfeit.
30. Consumers were initially interested and lured to the infringing items by the use of the

"H2O Zone" mark.

31. As a result of Defendant's infringement, Funtastic has suffered irreparable harm to valuable "H2O Zone" trademark. Unless the Defendant is permanently enjoined from further infringement, Funtastic will continue to suffer irreparable harm.
32. A permanent injunction is necessary to prevent the Defendant from further interference with Funtastic's trademark rights.
33. As a result of the Defendant's infringement under 15 U.S.C. § 1114, Funtastic has been injured and is entitled to damages, including but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT II
TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(c)

34. Funtastic incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
35. The "H2O Zone" trademark is the product of creativity and imagination.
36. The "H2O Zone" trademark is distinctive and well known.
37. Defendant adopted the "H2O Zone" trademark after the mark became famous.
38. Defendant's use of the "H2O Zone" trademark caused dilution of the marks.
39. Defendant's use of the "H2O Zone" trademark is commercial and in commerce.
40. Defendant's use of the "H2O Zones" trademark has weakened the unique association of the mark with Funtastic, as owner of the mark.
41. As a result of Defendant's dilution under 15 U.S.C. § 1125(c), Funtastic has suffered irreparable harm to valuable "H2O Zone" trademark. Unless the Defendant is permanently enjoined from further dilution, Funtastic will continue to suffer irreparable

harm.

42. A permanent injunction is necessary to prevent the Defendant from further interference with Funtastic's trademark rights.
43. Defendant's dilution of the "H2O Zone" mark has caused Funtastic damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

**COUNT III
FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP,
FALSE ADVERTISING AND
TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)**

44. Funtastic incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
45. Defendant used the "H2O Zone" trademark in commerce and in connection with the sale of goods or services.
46. Defendant's use of the "H2O Zone" mark is likely to cause confusion or mistake and/or is likely to deceive consumers as to the affiliation, connection or association of Defendant with Funtastic; or as to the origin, sponsorship, or approval of Defendant's goods by Funtastic.
47. Defendant's conduct constitutes false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendant's goods and constitutes trade dress infringement in violation of § 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).
48. As a result of Defendant's conduct, Funtastic has suffered irreparable harm to valuable "H2O Zone" trademark. Unless the Defendant is permanently enjoined from further false designations, false advertisement and trade dress infringement, Funtastic will continue to

suffer irreparable harm.

49. A permanent injunction is necessary to prevent Defendant from further interference with Funtastic's trademark rights.

50. Defendant's violations of 15 U.S.C. §1125(a) have caused Funtastic to incur damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT IV
COMMON LAW TRADEMARK INFRINGEMENT

51. Funtastic incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

52. Funtastic was the first to use the "H2O Zone" trademark or any marks similar thereto in association with water toys. As a result of the continued sale by Funtastic, the mark has become immediately recognizable and Funtastic has become identified in the public mind as the manufacturer and/or licensor of the products and services to which the "H2O Zone" trademark is applied.

53. Funtastic has acquired a reputation among consumers for quality and excellence, and the "H2O Zone" trademark has come to symbolize that reputation.

54. Defendant, with knowledge of and with intentional disregard for the rights of Funtastic, advertised, sold, and distributed items using the "Funtastic" mark or confusingly similar imitations thereof.

55. Defendant's use of the "H2O Zone" mark has created the likelihood of confusion among consumers.

56. Defendant's acts constitute trademark infringement and willful infringement under the common law.

57. As a result of Defendant's conduct, Funtastic has suffered irreparable harm to valuable "H2O Zone" trademark. Unless the Defendant is permanently enjoined from further infringement, Funtastic will continue to suffer irreparable harm.
58. A permanent injunction is necessary to prevent Defendant from further interference with Funtastic's trademark rights.
59. As a result of Defendant's infringement, Funtastic has suffered damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

COUNT V
UNFAIR COMPETITION

60. Funtastic incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
61. Defendant's unlawful and unauthorized use of the "H2O Zone" trademark constitutes unfair competition with Funtastic.
62. Defendant's conduct creates consumer confusion as to the source and/or origin of the infringing items.
63. Defendant's use of the "H2O Zone" trademark is an attempt to interfere with Funtastic's business relationship with its consumers and to trade on Funtastic's goodwill.
64. As a result of Defendant's conduct, Funtastic has suffered irreparable harm to valuable "H2O Zone" trademark. Unless Defendant is permanently enjoined from further unfair competition, Funtastic will continue to suffer irreparable harm.
65. A permanent injunction is necessary to prevent Defendant from further interference with Funtastic's trademark rights.
66. Defendant's unfair competition has caused Funtastic to incur damages, including but not

limited to, Defendant's profits from the sale of the infringing products, actual damages, costs of suit and attorney's fees.

COUNT VI
CONVERSION UNDER IND. CODE § 35-43-4-3

67. Funtastic incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
68. Defendant knowingly or intentionally exerted unauthorized control over the property of Funtastic.
69. Defendant sold items bearing Funtastic's intellectual property without Funtastic's consent and in a manner or to an extent other than that to which Funtastic had consented.
70. Defendant knowingly or intentionally exerted unauthorized control over the goodwill developed by Funtastic.
71. As a result of Defendant's conversion, Funtastic was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT VII
FORGERY UNDER IND. CODE § 35-43-5-2(b)

72. Funtastic incorporates by reference the allegations contained in the previous paragraphs of this Complaint.
73. Defendant, with the intent to defraud, made, uttered, and/or possessed a written instrument in such a manner that it purports to have been made by Funtastic.
74. Funtastic did not give Defendant the authority to make or possess the infringing items.
75. As a result of Defendant's forgery, Funtastic was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime

Victim's Act, Ind. Code § 34-24-3-1.

COUNT VIII
COUNTERFEITING UNDER IND. CODE § 35-43-5-2(a)

76. Funtastic incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
77. Defendant knowingly or intentionally made and/or uttered a written instrument in such a manner that it purports to have been made by Funtastic.
78. Funtastic did not give Defendant the authority to make or utter the infringing items.
79. As a result of Defendant's counterfeiting, Funtastic was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

COUNT IX
DECEPTION UNDER IND. CODE § 35-43-5-3

80. Funtastic incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
81. Defendant knowingly or intentionally made a false or misleading written statement with the intent to obtain property.
82. Defendant, with the intent to defraud, misrepresented the identity or quality of property.
83. As a result of Defendant's deception, Funtastic was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

PRAYER FOR RELIEF

WHEREFORE, Funtastic prays for relief against the Defendant as follows:

- a. That Defendant, its officers, partners, agents, servants, affiliates, employees,

attorneys, and representatives, and all those in privity or acting in consent or participation with Defendant, and each and all of them, be permanently enjoined from:

- (i) Imitating, copying, reproducing, or using, in any manner, the "H2O Zone" trademark, or any other mark confusingly similar to the "H2O Zone" trademark;
- (ii) Committing any act that dilutes or is likely to dilute the distinctiveness of the "H2O Zone" trademark;
- (iii) Committing any act that is likely to create the impression that Defendant's business or products are in any way sponsored by, approved of or otherwise affiliated or connected with Funtastic;
- (iv) Importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product or service using any simulation, reproduction, counterfeit, copy or imitation of any Funtastic trademark or trade dress; and
- (v) instructing, assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (iv) above.

b. That Defendant be required to:

- (i) Deliver to Funtastic for destruction all goods and materials bearing "H2O Zone" trademark which Defendant has in its possession;
- (ii) Recall and deliver to Funtastic for destruction all goods and materials bearing the "H2O Zone" trademark that have been previously distributed

or sold;

- (iii) Pay compensatory damages to Funtastic in an amount to be determined at trial for the injuries Funtastic has sustained as a consequence of the acts complained of;
- (iv) Pay Funtastic treble damages, or alternatively, Defendant's profits trebled, whichever is greater;
- (v) Pay all of Funtastic's litigation expenses, including reasonable attorneys' fees and costs of this action;
- (vi) Pay interest to Funtastic, including pre-judgment interest on the foregoing sums; and
- (vii) File with this Court and serve on Funtastic an affidavit setting forth in detail the manner and form of Defendant's compliance with the terms of this Court's orders.

- c. That Funtastic be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL JURY

Funtastic hereby respectfully requests a trial by jury in this cause, and for all other relief just and proper in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Maidera L. Fulford', written over a horizontal line.

Maidera L. Fulford
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